

For purposes of the Illinois Retailers' Occupation Tax Act, food is "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice." See 86 Ill. Adm. Code 130.310(b)(1). (This is a PLR.)

May 17, 2002

Dear Xxxxx

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of April 11, 2002. This also confirms our clarifying telephone conversation of May 17, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 (see <http://www.revenue.state.il.us/Laws/regs/part1200/>) appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I received your January 22, 2002 letter, a General Information Letter (attached) about sales by ABC of its nutritional and food products. Since that letter is not binding on the Illinois Department of Revenue ('Department'), I am sending you this letter setting out the information required by the Department in order to obtain a binding 'Private Letter Ruling' pursuant to 2 Ill. Adm. Code 1200.110 (b)(1-8).

ABC would like a private letter ruling indicating whether each of the products it sells are taxable or exempt from tax in Illinois.

Below I set out each of the factors listed in the rule (underlined sections) and then discuss the information requested. For ease of reference, I am including a copy of Rule 1200.110.

- 1) A complete statement of facts and other information pertinent to the request. The request must contain a complete statement of all material facts. The material facts include the identification of all interested parties, a statement of the business reasons for the transaction, a detailed description of the transaction. The request must contain an analysis of the relation of the material facts to the issues.

ABC sells a variety of weight loss, nutritional, and food products; dietary supplements; vitamins; snacks; and protein bars. ABC does not have stores or

sales representatives in Illinois. Instead, ABC sells its products to independent distributors in Illinois who in turn sell the products out of their homes to their own customers. ABC is currently registered for Illinois sales and use tax and is reporting and paying sales and use tax on all of its distributors' product sales in Illinois.

- 2) All contracts, licenses, agreements, instruments or other documents relevant to the request.

For the Department's review, ABC is submitting copies of all of its products' packaging that list the ingredients included in each product.

- 3) An identification of the tax period at issue, and disclosure of whether an audit or litigation is pending with the Department.

The periods at issue begin with February 2002 through the present. Currently, ABC is neither under audit nor in litigation with the Department.

- 4) A statement that to the best of the knowledge of both the taxpayer and the taxpayer's representative the Department has not previously ruled on the same or similar issue for the taxpayer or a predecessor, or whether the taxpayer or any representatives previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued.

Neither ABC nor its representative have previously requested a private letter ruling on the taxability of the products it sells.

- 5) A statement of authorities supporting the taxpayer's views, an explanation of the grounds for that conclusion and the relevant authorities to support that conclusion.

After reviewing the attached letter ruling (ST 01-0039-GIL) previously made by the Illinois Department of Revenue for another taxpayer, it appears to ABC that it should be collecting and remitting Illinois food tax, instead of sales and use tax, on the sales of its products.

- 6) A statement of authorities contrary to the taxpayer's views. Each taxpayer is under an affirmative duty to identify any and all authorities contrary to the taxpayer's views. If the taxpayer determines that there are no authorities contrary to his or her views, or taxpayer is unable to locate such authority, the request must contain a statement to that effect.

ABC is unaware of or unable to locate any authority contrary to its view that it should probably be collecting and remitting Illinois food tax on the sales of its products, instead of sales and use tax.

- 7) An identification of any specific trade secret information taxpayer requests be deleted from the publicly disseminated version of the private letter ruling.

There is no trade secret information that will be included in ABC's private letter ruling that will be publicly disseminated.

- 8) The signature of the taxpayer or the taxpayer's representative. A taxpayer's representative must also provide a properly executed power of attorney.

The executed power of attorney is included with this letter.

Per your conversation with my associate on February 28, 2002, you indicated to her that if the information contained and attached to this letter is insufficient for the Department to issue a binding private letter ruling, you would call her to request any additional information needed before sending us another nonbinding general information letter.

If you have any questions, please call me. Thank you.

Please refer to 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales is for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

The Department regulation states that food is "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice." See 86 Ill. Adm. Code 130.310(b)(1).

Distributors who sell food items without premises for consumption, such as those described in your letter, will incur liability at the State tax rate of 1%, so long as the majority of food sales made by those distributors are not food items sold in a state of preparation for immediate consumption.

As explained in the regulation, sales of medicines or drugs can also be subject to a low 1% rate, plus applicable local taxes. A medicine or drug is defined at Section 130.310(c)(1) as "any pill, powder, potion, salves, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities."

We have examined each of the product labels you submitted with your letter. We note these products mainly are dietary supplements or drink mixes. We conclude that each of the products qualifies for the low rate as a food item, so long as all the qualifiers listed above are met.

As we discussed in our phone conversation, the rates for local taxes vary in Illinois. The specific rate for food at any Illinois location can be found in the Sales Tax Rate Reference Manual that is listed at the Department's website.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.